

act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(1) of the act is automatically classified by statute into class III and must have an approval under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a

class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

#### **§ 888.5 Resurfacing technique.**

Because of resurfacing techniques, certain joint prostheses require far less bone resection than other devices intended to repair or replace the same joint. The amount of bone resection may or may not affect the safety and effectiveness of the implantation of the prosthesis. When a resurfacing technique is used, the name of the prosthesis includes this information.

#### **§ 888.6 Degree of constraint.**

Certain joint prostheses provide more constraint of joint movement than others. FDA believes that the degree of constraint is an important factor affecting the safety and effectiveness of orthopedic prostheses. FDA is defining the following standard terms for categorizing the degree of constraint.

(a) A "constrained" joint prosthesis is used for joint replacement and prevents dislocation of the prosthesis in more than one anatomic plane and consists of either a single, flexible, across-the-joint component or more than one component linked together or affixed.

(b) A "semi-constrained" joint prosthesis is used for partial or total joint replacement and limits translation and rotation of the prosthesis in one or more planes via the geometry of its articulating surfaces. It has no across-the-joint linkage.

(c) A "non-constrained" joint prosthesis is used for partial or total joint replacement and restricts minimally prosthesis movement in one or more planes. Its components have no across-the-joint linkage.

#### **§ 888.9 Limitations of exemptions from section 510(k) of the act.**

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of